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2011

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### Citation Details

Susan B Boyd, "Spaces and Challenges: Feminism in Legal Academia" (2011) 44:1 UBC L Rev 205-220.

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# SPACES AND CHALLENGES: FEMINISM IN LEGAL ACADEMIA

SUSAN B. BOYD<sup>†</sup>

## I. INTRODUCTION

Women now make up at least 50 per cent of students in the entry classes in most Canadian law schools.<sup>1</sup> Moreover, in some schools such as my own, women constitute about 50 per cent of the tenured or tenure stream professoriate—a marked change from my arrival at the UBC Faculty of Law in 1992. This feminization of legal education is not the result of affirmative action,<sup>2</sup> but rather the increased acceptability of a legal education for women (as compared to fields like engineering), the removal of formal and informal barriers to women's admission to law school, and women's strong academic records.<sup>3</sup> According to UBC's director of JD admissions, more women than

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<sup>1</sup> Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford: Hart Publishing, 2006) at 2.

<sup>2</sup> Worthy though affirmative action policies can be in enhancing participation of under-represented groups, they have not directed law school admissions or hiring processes at my law school.

<sup>3</sup> Many anecdotes have been told about law school administrators attempting to keep women students out of law schools earlier in the history of legal education, even after women could be formally admitted. See W Wesley Pue, *Law School: The Story of Legal Education in British Columbia* (Vancouver: UBC Faculty of Law, 1995) at 234. The move to a more objective system of assessing applicants based on the Law School Admissions Test and grades arguably has favoured women, although the LSAT creates other sorts of barriers, both financial and psychological. See generally Dawna Tong & W Wesley Pue,

men have applied for entry to Canadian law schools in recent years.<sup>4</sup> The reverse tends to be true for applications for faculty positions at my law school (especially for senior positions), but women have been successful nevertheless in being shortlisted and appointed to tenured or tenure stream positions. These women may identify as feminists, but they do not necessarily offer feminist legal perspectives in their courses, for reasons that I identify below.

Despite the fact that legal academia is now populated by virtually equal numbers of women and men, and despite the greater visibility of women (including feminist women) in positions of power, there remains a critical need for feminist presence, analysis, and critique in the 21st century. Indeed, feminist insight has never been needed more, not least due to its capacity to challenge complacencies about law's relationship to social justice and its efforts to deal with diversity. Feminism provides an important paradigm through which ongoing and shifting relations of power and inequality can be revealed. These oppressive relations prevail in the face of an often relentless gender neutrality of corporatist, neo-liberal governance regimes—regimes that actually make it harder to recognize inequalities. If critical thinking<sup>5</sup> is important to legal practice in an increasingly complex world, feminism is an important way to enhance it. Among other things, feminism has identified the problems of treating substantive legal fields as “silos” that do not intersect and interact in actual legal transactions. Feminist legal scholars have also emphasized the need to rethink legal categories and doctrines that have contributed to the disadvantaged position of women and other groups.<sup>6</sup>

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“The Best and the Brightest?: Canadian Law School Admissions” (1999) 37 Osgoode Hall LJ 843 at 874.

<sup>4</sup> In the 2008/09 and 2009/10 academic years, 54 per cent of the applicants to Canadian common law schools were female, versus 46 per cent male. Approximately 53 per cent of the offers went to women versus 47 per cent to men. Approximately even numbers of male and female students registered in 2009 in Canadian common law schools. At UBC in 2009, 52 per cent of registered students in fall 2009 were women and 48 per cent male. See email from Elaine Borthwick (9 June 2010).

<sup>5</sup> See generally John Allemang, “Critical Thinking” *The Globe and Mail* (12 June 2010) F1 (interview with Martha Nussbaum); Martha C Nussbaum, *Not For Profit: Why Democracy Needs the Humanities* (Princeton: Princeton University Press, 2010).

<sup>6</sup> See Regina Graycar & Jenny Morgan, *The Hidden Gender of Law*, 2d ed (Sydney: The

Feminism is also important because women continue to encounter barriers in gaining access to justice for reasons related to gender, in addition to other factors such as poverty. For example, despite the many law reforms in relation to sexual assault and evidence law, female complainants continue to encounter significant barriers in the criminal law system.<sup>7</sup> Feminism also has much to contribute to complex questions such as whether Muslim women who are sexual assault complainants are entitled to wear the *niqab* when giving evidence<sup>8</sup> because feminism itself has been challenged and complicated over the years by engagement with the diversities of race, class, culture, religion, and sexuality.<sup>9</sup> Those who have taken up this challenge are particularly well positioned to speak to important legal and social issues such as these.

This essay draws partly on my own experience as a law student and law professor over the past 35 years, as well as the experience of students with whom I have engaged over that period. My argument is that although many important changes have taken place in legal academia, and spaces made for individuals who were previously excluded, serious challenges remain, making it essential that a feminist presence and voice and a commitment to social justice be central. I end by briefly considering whether and how that feminist voice is changing in the 21st century.

## II. LEGAL EDUCATION: CHANGING TIMES AND NEW SPACES

I went to law school at McGill University in the mid-1970s, shortly after

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Federation Press, 2002) at 1–3.

<sup>7</sup> See e.g. Lise Gotell, “Rethinking Affirmative Consent in Canadian Sexual Assault Law: Neoliberal Sexual Subjects and Risky Women” (2008) 41 *Akron L Rev* 865; Janine Benedet & Isabel Grant, “Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Consent, Capacity, and Mistaken Belief” (2007) 52 *McGill LJ* 243; Christine Boyle, “Reasonable Doubt in Credibility Contests: Sexual Assault and Sexual Equality” (2009) 13 *International Journal of Evidence and Proof* 269.

<sup>8</sup> See *R v NS* (2009), 95 OR (3d) 735, 191 CRR (2d) 228 (Sup Ct J), rev’d in part 2010 ONCA 670, 102 OR (3d) 161.

<sup>9</sup> See Emily Grabham et al, eds, *Intersectionality and Beyond: Law, Power and the Politics of Location* (New York: Routledge-Cavendish, 2009).

women began to enter law school in significant numbers, but well before women's place in law was taken for granted and certainly before courses such as "women and the law" were offered. Indeed my own legal education contained very little by way of "perspectives" on law, or explicit discussions of law in its wider social, economic, and political context. The one exception that I recall was the first year course Foundations of Canadian Law, which included a section on Aboriginal title, thanks to Professor Patrick Glenn. Most courses remained traditionally doctrinal in content and the most common pedagogy was the lecture method, sometimes varied by the Socratic method, the use of which quite frankly terrorized me in first year Contracts! Feminism and social justice were rarely mentioned, if at all, even in courses such as Jurisprudence.

Having thrived in my undergraduate programs in history and sociology, and having had a taste of the new field of women's studies, I found law school both dry and a shock. For some reason, I persevered, although I never felt like an "insider" during my legal education. My sense of being an outsider<sup>10</sup> was probably due to three factors: my family background included no lawyers and, in fact, no one else with a university degree; I did not come from an upper middle class family, as did many students at my law school; and I was most intellectually engaged with questions that I now recognize were then more typically asked by legal sociologists than by law professors. I emerged from law school intact but unclear about my future path as a lawyer as I watched most of my colleagues transition smoothly to articling. I eventually was called to the Ontario bar, but also completed graduate degrees in international and comparative law.

By the time I became a law professor in the mid-1980s, after being an in-house consultant with the Law Reform Commission of Canada, things were changing quite rapidly. Legal scholars and teachers were beginning to look outside law's paradigm and to ask critical questions about it, often drawing on work in other disciplines.<sup>11</sup> "Law in context" and "law and society"

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<sup>10</sup> See Natasha Bakht et al, "Counting Outsiders: A Critical Exploration of Outsider Course Enrollment in Canadian Legal Education" (2007) 45 Osgoode Hall LJ 667 at 672 ("outsiders" are "members of groups that have historically lacked power in society or have traditionally been outside the realms of fashioning, teaching, and adjudicating the law").

<sup>11</sup> See Consultative Group on Research and Education in Law, *Law and Learning: Report to*

courses were springing up, as well as courses on “women and the law.” Moreover, feminists were challenging the very way in which law was taught.<sup>12</sup> At Carleton University’s Department of Law, which was housed in a Faculty of Social Sciences and held a somewhat more interdisciplinary mandate than the typical law school did at the time, I was able to develop seminars such as Feminist Legal Theory. More striking perhaps, when I was recruited to take up the new chair in women and the law (later renamed chair in feminist legal studies) at the UBC Faculty of Law in 1992, I was also able to develop courses related to feminism in law. In both university settings, however, I was expected also to teach “bread and butter” courses, usually Family Law in my case. It was, and is, unusual for feminist legal scholars to be appointed exclusively for their expertise as such, just as it is unusual for legal scholars to be appointed for their expertise in racism and law or sexual orientation and law. These may be value-added fields of expertise, but they generally accompany another field typically viewed as “core” in a law school curriculum.

UBC Law’s endowment of a research chair in women and the law in the early 1990s was nevertheless quite remarkable and it was the first such permanent chair in Canada. It is interesting to consider the conditions under which this chair was created. Some research indicates that many institutional settings in Canada were more willing to deal with women’s inequality in the early 1990s than they were before, or after.<sup>13</sup> Arguably, this period represented an all too brief heyday of (liberal) feminism. UBC appointed Lynn Smith as its first female dean of law in 1991, and she had long been involved in the women’s movement and organizations such as the Women’s Legal Education and Action Fund (“LEAF”). A few other feminist legal scholars had also been hired in the late 1980s under the previous dean, Peter Burns.

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*the Social Sciences and Humanities Research Council of Canada* (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983) at 155.

<sup>12</sup> See Jenny Morgan, “The Socratic Method: Silencing Cooperation” (1989) 1 *Legal Educ Rev* 151.

<sup>13</sup> See e.g. Lise Gotell, “The Discursive Disappearance of Sexualized Violence: Feminist Law Reform, Judicial Resistance, and Neo-Liberal Sexual Citizenship” in Dorothy E Chunn, Susan B Boyd & Hester Lessard, eds, *Reaction and Resistance: Feminism, Law, and Social Change* (Vancouver: UBC Press, 2007) 127 at 128–31.

Perhaps it also helped that the funding for the chair came from a combination of private donations and a time-limited government-matching scheme. The chair was therefore positioned as additional to others in the Faculty of Law, with separate funding. Moreover, the initial mandate of the chair was “women and the law,” a more neutral casting than “feminist legal studies.” Another factor that may have enhanced support for the new chair, even among colleagues who may have been less than enthusiastic about prioritizing this field, was that its very existence meant that they themselves did not need to deal with students with feminist interests. These students could be directed to me for answers to their questions, or they could be advised to take my courses if they were interested in feminism. As a result, existing courses (the “core”) would not have to be altered.

My intention is not to be negative or to suggest that UBC Law should not be celebrated for its decision to establish a chair in women and the law. Many members of the Vancouver legal community worked long and hard to make this chair happen and UBC Law is now squarely on the academic map as a law school with a strong feminist presence. According to our director of JD admissions, UBC Law attracts a significant number of students interested in feminist legal studies and social justice, and our Centre for Feminist Legal Studies (which celebrated its 10th anniversary in 2007) is publicized as one of the strengths of the school. In addition to our courses on feminism and law, at least one of which is taught every year, some sections of courses in the “core” curriculum (e.g. Tax Law, Evidence, Criminal Law, Torts, Administrative Law, and Corporations) are taught by feminist law professors, so that many students are exposed to at least some feminist angle on various fields of law.

### III. LEGAL EDUCATION: ONGOING CHALLENGES

Given these positive developments, why would I insist that a strong feminist presence in legal education must still be nurtured? Has feminism not been mainstreamed into legal academia by now, in part as a result of the value-added approach mentioned earlier? To understand my argument that feminism remains necessary to legal education, let me raise some issues and place them within the context of shifts in legal education during a period of neo-liberal governance and increased privatization and corporatism. These socio-economic trends have profoundly influenced universities, which increasingly

operate on a corporate model in the face of reduced government funding, with costs being privatized where possible, where “academic plans” sound increasingly like business plans, and where “outputs” such as publications are counted.<sup>14</sup>

The first issue is that the critical thinking that Martha Nussbaum has recently reminded us is so important<sup>15</sup> is still not central to legal education. The “core” curriculum remains a powerful presence in Canadian law faculties, despite the addition of “law in context” courses on its periphery.<sup>16</sup> What this means is that most law school administrations take the position that courses that are “core”—not necessarily mandatory, but viewed as essential to a student’s legal education—must be offered and staffed as a priority. “Law and” courses, such as Feminism and Law or Social Justice and Law courses, are a lesser priority, and are not necessarily offered every year. As a result, students can easily design their upper year program to be virtually devoid of critical approaches to law.

Law students are easily seduced by the core curriculum, for various reasons. We live in an era during which law school tuition fees have risen exponentially (to over \$10 thousand per year in most provinces), as government funding drops and law schools are encouraged to move towards operating on a cost recovery basis. Students who do not have access to wealth incur significant debt to complete the three years of law school, which typically follow an undergraduate degree such as a BA where many students accumulate a debt load.<sup>17</sup> The incentive for students to obtain articling positions and junior lawyer positions in large law firms is significant. The larger firms not only pay

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<sup>14</sup> See Susan B Boyd, “Corporatism and Legal Education in Canada” (2005) 14 Soc & Leg Stud 287; Marilee Reimer, ed, *Inside Corporate U: Women in the Academy Speak Out* (Toronto: Sumach Press, 2004); Margaret Thornton, “The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy” (2001) 8 Int’l J Legal Prof 37.

<sup>15</sup> See Nussbaum, *supra* note 5.

<sup>16</sup> See Annie Rochette & W Wesley Pue, “‘Back to basics’? University Legal Education and 21st Century Professionalism” (2001) 20 Windsor YB Access Just 167 at 180–83.

<sup>17</sup> See Bakht et al, *supra* note 10 at 719; Jo-Anne Pickel, “What Will Rising Tuition Fees Mean for Law and Learning?” (2003) 18 CJLS 67.



higher salaries, but once they hire a student, they are more likely to cover the student's expenses during bar admission courses and even pay a portion of their third year university fees. In addition, opportunities for articling are more limited, and less well paid, for students who want to practice public interest or social justice law. All of this corrals students into the larger firms where a corporate ethos often dominates, which may mean that courses such as Feminist Legal Studies on student transcripts are not valued or viewed as suspicious.

Such suspicion may be informed by a general "backlash" against feminism and a sense that we live in a post-feminist era.<sup>18</sup> Students themselves may be far more comfortable expressing an interest in environmentalism or anti-racist or anti-poverty work than they are with identifying with feminism. Feminist students have in the past expressed concern to me about the implications of having feminist courses or feminist volunteer work on their résumés, although UBC Law's Career Services personnel indicate that this concern has waned.<sup>19</sup> As a result of these pressures, business law tends to dominate law schools even if many diverse course offerings exist, as they do at my school. Students are advised to be sure to take Corporations and Tax, even if they have no interest in practicing in these fields, because they are more practical and are on the bar admission exams. While I endorse the value of a generalist law degree, my point is that students are rarely advised to be sure to take a critical thinking course such as Feminist Legal Theory. The new minimum requirements for an accredited Canadian common law degree proposed by the Federation of Law Societies in October 2009 are not likely to foster enthusiasm for "outsider" courses, but rather to dampen it.<sup>20</sup>

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<sup>18</sup> See Dorothy E Chunn, Susan B Boyd & Hester Lessard, "Feminism, Law, and Social Change: An Overview" in Chunn, Boyd & Lessard, *supra* note 13, 1.

<sup>19</sup> See emails from Pamela Cyr, Jennifer Poon, and Tracy Wachmann (14 June 2010).

<sup>20</sup> See Federation of Law Societies of Canada, *Task Force on the Canadian Common Law Degree: Final Report* (October 2009) (Chair: John JL Hunter), online: <<http://www.flsc.ca/en/pdf/CommonLawDegreeReport.pdf>>. For a history of this proposal and critical reactions to it by Canadian law teachers, see "Special Feature—Dialogue on Legal Education in Common Law Canada" (2009) *Can Legal Educ Ann Rev* 135.

Student enrolment in feminist law courses has diminished in the 21st century, at least at some law schools, and it has never been high. Approximately seven to eight per cent of law students take a feminist law course.<sup>21</sup> These low numbers may reflect wariness on the part of some anti-sexist students to engage with what they see as mainstream feminism produced by academic feminists who are often privileged along lines such as race, class, and disability status. Having said this, other reasons why students do not take these classes include market pressures, not wanting their beliefs to be challenged, stereotyped perceptions of such courses, fear about extra workload, and lack of clarity about their importance.<sup>22</sup> Diminished student enrolment in feminist law courses may also in part be due to a proliferation of other “outsider” courses, which in itself, is not a bad thing.<sup>23</sup>

If market and other pressures influence even fewer students to take feminist law courses, the low enrolment dictates cancellation or offering such courses in alternative years only. The knock-on effect of diminished feminist course offerings is that hiring of professors who specialize in feminist legal studies or related fields becomes a lower priority. Margaret Thornton tells the story of one Australian law school that terminated the services of five feminist and socio-legal scholars during a period of organizational change, due to their failure to meet the imperative of “professional practice.”<sup>24</sup> While I have not heard of any such extreme stories in Canada, we have not yet entered an era when feminists can proudly advertise their feminist credentials to all prospective employers, whether these be law firms or law schools.

When hiring of faculty members takes place, finding candidates who can teach in core areas—especially the first year “core” courses such as Property, Contracts, Criminal Law, and Torts—often takes priority, even in law schools with feminists in the dean’s office. As well, law schools often snap up,

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<sup>21</sup> See Bakht et al, *supra* note 10 at 698.

<sup>22</sup> See *ibid* at 714–28.

<sup>23</sup> “Outsider” courses are defined as those courses for which an outsider orientation (e.g. critical race, Aboriginal, feminist, queer, disability, or class oppression) is central to the very nature of the course. See *ibid* at 672.

<sup>24</sup> See Margaret Thornton, “The Dissolution of the Social in the Legal Academy” (2006) 25 Australian Feminist Law Journal 3 at 12.

as rare commodities, candidates in fields where it is difficult to lure lawyers away from lucrative private practices, such as business and tax law. Graduate students who have focused their research on “core” fields are more likely to be offered interviews than those who have worked more squarely within fields such as feminist legal theory, lesbian legal studies, critical race theory and law, and so on. At our faculty, we have been fortunate to recruit several professors who contribute to the “core” fields and who also identify as feminist. However, few of these professors teach in the feminist curriculum, and their energies are often taken up by activities related to the “core.” Feminists may well be hired, but the rationale for their recruitment is rarely first and foremost for their expertise in feminist theory.

One might argue that it is sufficient to have feminist legal scholars teaching in the core areas, because they will infuse these courses with feminist insight. Specialized feminist law courses might not, then, be necessary. While this development would be welcome, debates continue about whether “mainstreaming” entirely resolves the question of incorporating outsider perspectives into legal education.<sup>25</sup> Moreover, feminism has not yet been mainstreamed across the law curriculum in the way that mandates elimination of specialized courses, although the situation is much improved from the 1970s. One problem is that not all professors are motivated to include feminist analysis and some are wary of doing so or even hostile. Another is that in most “core” courses, there is so much content to cover that the time spent on feminist perspectives is likely to be minimal, even if the course *is* taught by a feminist. Finally, if only some sections of a core course feature feminist content, students tend to worry—and complain—that they are not being taught the “real” law and that the approach being taken is “biased” or “subjective.”

Why is it important to feature feminist analysis of law? Many law students arrive at law school with an often unconscious allegiance to liberalism, the dominant (and therefore often unarticulated) political philosophy in North America, which assumes that everyone is more or less on a level playing field and, if given the opportunity to compete under “objective” legal norms, will be able to succeed. Given the extent to which law is embedded in liberalism, it takes time and a conscious effort to educate those studying law

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<sup>25</sup> See Bakht et al, *supra* note 10 at 679.

in the ways that the liberal values underlying most legal norms may marginalize those for whom the level playing field does not work well, such as poor women and indigenous peoples. Even a course in feminist legal theory barely scrapes the surface of this sort of critical analysis. Expecting that complex feminist analysis that develops a nuanced mode of critique will be taught in courses such as Taxation, Evidence, or even Family Law (which involves many issues involving gender, race, and sexual orientation) is unrealistic.

As well, those professors who explicitly introduce feminist perspectives into their core courses almost inevitably encounter resistance or even hostility from some law students—even sometimes students who are sympathetic to feminism. Feminist and other critical perspectives such as critical race theory are too often viewed as additional and peripheral to what is viewed as the central purpose of the course—learning a “neutral” set of legal norms and procedures—especially if other professors are not introducing them in their core courses. A feminist professor who tries to thoroughly infuse a “core” course with critical analysis of existing norms is almost certain to be penalized by students on her teaching evaluations. My relatively non-ambitious efforts to raise questions about gendered inequalities and sexual orientation in some parts of my Family Law course are typically criticized by several students on their course evaluations, and they often inflate the extent to which these questions permeate the course. I also receive applause from students but, ironically, strongly feminist students often find my course rather too liberal and pluralist! All of these problems point towards the need for specialized courses in feminism and law, as well as mainstreaming, at least for the time being until the law school curriculum is thoroughly infused with critical perspectives.

And what of working conditions for feminist professors in the relatively privileged professional realm of legal academia? The good news is that with more women in an academic unit, committee work can be spread among women—a welcome change from the days when finding one woman for every committee meant that the few female professors were stretched across numerous committees, typically incurring a far heavier service workload than their male colleagues, a fact not valued to any great extent in tenure and promotion processes. As well, maternity and parental leave benefits have improved, and my observation is that more female (and feminist) professors are having babies than was so in my generation—even prior to obtaining tenure.

Balancing an academic workload with responsibility for young children is not easy,<sup>26</sup> but more women are doing it, and some men too are taking parental leave. As a result, institutional cultures may be pushed to adapt to the reality that workers are also parents.

The bad news in terms of work/life balance is that the requirements for securing tenure have become more onerous over the years in terms of publishing, securing research funding, obtaining strong teaching scores, and so on. For scholars who have children or other care giving responsibilities, balancing—and meeting—the various performance demands can be tough. Since care giving for children and elderly parents remains a primarily female responsibility, these demands can be tougher on women than men. As well, over the same period that expectations in terms of grant-getting and publishing have increased, public funding for feminist projects has diminished, for instance, with elimination of the Social Sciences and Humanities Research Council strategic funding program on Women and Change, and cancellation of policy research funding for Status of Women Canada.

Workload issues are also complex for feminists who take seriously their responsibilities to students and community. Those feminist scholars who donate their expertise to community groups or who spend considerable amounts of time mentoring students or who work on labour intensive university committees are unlikely to be adequately recognized for this extra work. Indeed, they are likely to be penalized if the extra work means that they are not able to meet the standards of publishing or grant-getting. The extra demands on professors who are women of colour or indigenous to be mentors and role models and representatives on committees are particularly onerous.<sup>27</sup> My feminist colleagues seem to contribute a disproportionate amount of time to mentoring students and colleagues, offering expertise to community groups, and doing administrative work. These contributions are

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<sup>26</sup> See Pam E Hrakata & Judith C Daniluk, "Swimming Upstream: The Experience of Academic Mothers of Young Children" (2009) 43 *Canadian Journal of Counselling* 283.

<sup>27</sup> See Camille A Nelson, "The Conflicting and Contradictory Dance: The Essential Management of Identity for Women of Colour in the Legal Academy" in Elizabeth Sheehy & Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 117 at 120–33.

often rewarding and enhance the experience of students, colleagues, and the reputation of the university in the community, but may not be rewarded in the modern university system, which places heavy weight on publications and grant funding. I would not argue that mentoring students and fostering community should supplant our responsibility to disseminate our research through publication. However, the trend is clearly towards measuring output in a way that may marginalize scholars who also prioritize the value of community—an ironic move in an era when universities wish to proclaim their relevance.

These trends must be placed within the “corporatization” of universities mentioned above. On the student side, education is constructed as a commodity, with students—and their future employers—as the consumers who demand results in order to warrant increasingly high tuition fees. Faculties whose primary mandate is to train “professionals,” such as law faculties, are particularly susceptible to the pressure to raise tuition fees, in part to subsidize other faculties that are less able to demand such fees. This fee trend further encourages those within law faculties to construct their primary mandate as serving the business world (which has the most fundraising potential). If feminist legal knowledge is not constructed as a desired “product” within this paradigm, fewer feminist courses may be offered, and fewer feminist legal scholars hired.

This “corporatization” of universities also effectively means that certain feminists will succeed in academia whereas others will not—at least at a “research-intensive” university such as my own. A feminist who is an active publisher and who receives significant research grants will be lauded by the university. She will be set apart from the feminist who challenges the status quo of the way the law school operates, or who prioritizes her family life or the collegiality of her faculty over the demands of publishing, or who spends time with struggling or alienated students (who may more often be indigent, racialized, lesbian or gay, or poor). A hierarchy of feminists within the university may therefore emerge. The “SuperWoman” who can do it all—at least for a time—will come out on top.

Finally, the feminization of law schools reflects a particular demographic: A majority of law professors, including women, are still white and middle class. Legal academia thus has a tendency to reproduce its own image—not unlike any profession—in a way that reproduces racial and class-based ine-

qualities. Schools that have hired racialized and indigenous women have often seen them leave the university to take up other positions. The small number remaining increasingly contrasts with growing numbers of racialized and indigenous students. My perception is that there may be more openness to interviewing racialized and indigenous scholars for academic positions, in recognition of the ongoing domination of white people in the university, than they are to interviewing scholars who readily own the political label of “feminist.” While diversifying the demographic of the legal professoriate is crucial, racialized *feminists*, especially those who work on race, gender and law, may be regarded as too challenging and not make the final cut. Even initiatives to increase the proportion of racially diverse appointments may be criticized as undermining the university’s mandate to promote “excellence.” Some time ago, after complaints about a more proactive employment equity statement, the UBC Board of Governors produced a statement that highlights merit and qualifications over diversifying the university’s demographic: “UBC hires on the basis of merit and is committed to employment equity. All qualified persons are encouraged to apply.”<sup>28</sup> The Board of Governors seemed to be concerned that diversifying the professoriate could detract from the university’s goal of excellence rather than enhancing it. More work clearly needs to be done to think about excellence in relation to a diversity of backgrounds and perspectives.

#### IV. CONCLUSION

Some challenges clearly remain, then, in relation to feminism and feminists in legal academia. Feminism remains somewhat at the margins of the law school enterprise, although feminist professors carry considerable workload. The terms under which we are present in law schools may be less than ideal, and corporatist changes in university culture appear to discourage rather

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<sup>28</sup> UBC Human Resources, *Advertising Guidelines*, online: UBC <[http://www.hr.ubc.ca/faculty\\_relations/recruitmentguide/adguidelines.html](http://www.hr.ubc.ca/faculty_relations/recruitmentguide/adguidelines.html)> at 6.2.1. The current version of the statement encourages that the following language be added, but it is optional:

UBC is strongly committed to diversity within its community and especially welcomes applications from visible minority group members, women, Aboriginal persons, persons with disabilities, persons of any sexual orientation or gender identity, and others who may contribute to the further diversification of ideas.

than encourage a feminist ethic. One might think that a law school's vision would be one that clearly prioritized social justice, and that feminism and feminists would be viewed as central to accomplishment of that vision, given the key contribution that feminists have made to social and legal thought in the late 20th and early 21st centuries. Although social justice plays a more central role in law schools now than it did in, say, the 1970s, such questions have not yet been institutionalized in the way that most feminist legal scholars call for. As Sanda Rodgers, a former dean of the University of Ottawa Faculty of Law, has said:

Canadian law schools actively practise and reproduce systems of discrimination. . . . Law schools, singly and collectively, have a legal and moral obligation to institutionalize an educational commitment to an equality agenda. . . . Transformation for equality must be a core value, perhaps the only core value, of legal education.<sup>29</sup>

And yet, feminists who take up positions of power in universities almost always end up curtailing their feminism while in those positions, often in an effort to appear to be even-handed as between various constituencies, and so as not to alienate potential donors who may not appreciate the need for feminist perspectives. Prioritizing equality, social justice, or feminism is almost impossible within such a paradigm.

Having raised various challenges facing feminists in legal academia, I want to end on an optimistic note. Feminists with diverse perspectives participate in law schools more than ever before. We sit on numerous committees that influence policy at various levels of the university and teach a variety of courses. In contrast to the suggestion made by some that young women are eschewing feminism, my experience is that each year our law school admits a committed group of feminists and pro-feminist men for whom social justice is central, and who want their legal work to make a difference. Their fields of interest and activism are diverse, and they are smart and articulate. Sometimes they work on issues that have particular pertinence in the post-9/11

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<sup>29</sup> Sanda Rodgers, "Educating for Equality: The Meaning of Feminist Administration for Legal Education in Canada" in Elizabeth Sheehy & Sheila McIntyre, eds, *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) 149 at 150.



era, such as the discriminatory impact of immigration and security measures. Or, they might work on environmentalism, queer issues such as transgender rights, or issues related to poverty or racism. Many are very interested in international social justice work. Sometimes these issues do not clearly have a “feminist” component, at least not in the sense of a clear focus on eliminating women’s inequality; but they almost always have something to do with women’s well-being. Others, though, work on questions that have long been central to the women’s movement, such as reproductive rights. A few years ago, a group of women students at my law school initiated a “Law Students for Choice” group, which has brought guest speakers to the school and attracted large audiences. All of these students are claiming their own space in law school, and they point towards an approach to law that centres feminism as one of many aspects of social justice, including anti-racism, queer theory, and anti-ableism.

I find them inspiring and their presence and their actions convince me that the gender neutral trends of neo-liberalism will not go unchallenged. Indeed, I am optimistic that these students will expand their demands for a legal education that is informed by feminism and other “outsider” perspectives, and work with their teachers to realize the goal of making law a tool that works for everyone. As one Canadian study found, students who plan to take outsider courses do so primarily because they see the material as being *relevant* to today’s world.<sup>30</sup> Hopefully they will carry this ethic and their critical thinking into the legal profession and encourage its adaptation to the diverse population that it now serves.

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<sup>30</sup> See Bakht et al, *supra* note 10 at 709, 730.